

What happens after oral argument?

After oral argument, a designated “writing judge” drafts an opinion for the others to consider.

Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, reverse in part, or both. Not infrequently, the opinion instructs the trial court about next appropriate steps.

Many opinions are unanimous, although non-unanimous opinions (2-1) are not uncommon. Judges sometimes write separate concurring or dissenting opinions that emphasize different points of law or facts than the main opinion. (Historically, the ideas contained in dissents have sometimes been adopted as the law of the land – over time – on a particular issue.)

Once issued, all opinions are published on the court’s website and are permanently maintained by the Clerk of Appellate Courts.

Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason.

If the petition is denied, the Appeals Court decision stands.

Attorneys for the Parties

For the Appellant

Heather M. Shumaker is an Indianapolis native who graduated from North Central High School, IUPUI (B.A. Political Science), Indiana University School of Law-Indianapolis (J.D. 2007). She is a member of the Indiana Bar (2009) and is also admitted to in the U.S. District Court for the Southern and Northern Districts of Indiana.

Ms. Shumaker has transferred from the practice of law to serve as a juvenile advocate as Boone County JDAI Coordinator and Director of the Boone County Youth Assistance Program. Prior to this transition, Ms. Shumaker practiced law in Boone County focusing mainly on criminal law but also handled family law cases. This is the second time Ms. Shumaker has been asked to present oral argument; the first took place in 2011 at Indiana State University in the matter of *Roland Ball v. State of Indi-*

Judge Najam, cont.

Symposium on the Role of State Intermediate Appellate Courts,” attended by judges from 22 states, the first such national conference.

He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a Fellow of the American, Indiana and Indianapolis Bar Foundations, a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout. Judge Najam and his wife live in Bloomington.

Judge Baker, cont.

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board’s Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Judge Pyle, cont.

corporate matters.

He was appointed judge of Madison Circuit Court by Gov. Daniels in 2009 and retained his seat by election in 2010. During his tenure, Judge Pyle presided over major felony trials, promoted greater use of technology in the courts, and was an advocate for problem-solving courts.

Judge Pyle enjoys motorcycle racing, playing piano, martial arts, and competitive marksmanship.

He is the son of Rudolph and Caroline Pyle, and is the proud father of his son Seth.

ana. This current matter is the last case in which Ms. Shumaker serves as counsel.

Ms. Shumaker still resides in Indianapolis, is married and has two children.

For the Appellee

George P. Sherman was raised in Fremont, MI and Zephyrhills, FL. He received his Bachelor of Arts degree in religious studies from Bob Jones University in Greenville, SC in 1999 and his Doctor of Jurisprudence degree from Indiana University School of Law-Bloomington in 2002.

During law school, Mr. Sherman was named one of the best oral advocates in the Sherman Minton Moot Court Competition. Mr. Sherman also clerked at the Office of the Indiana Attorney General in the General Litigation and Appeals Divisions.

Following his graduation from law school, he had a postdoctoral fellowship at the law

school with Fred Aman, who was then Dean of IU School of Law-Bloomington.

Mr. Sherman was admitted to practice in Indiana and the U.S. District Courts for the Northern and Southern Districts of Indiana in 2002. In December of that year he joined the Office of the Indiana Attorney General as a Deputy Attorney General in the Appeals Division.

Mr. Sherman has argued before the Court of Appeals of Indiana, the Indiana Supreme Court and the United States Court of Appeals for the Seventh Circuit, including in *Beattie v. State*, 924 N.E.2d 643 (Ind. 2010); *Salyers v. State*, 862 N.E.2d 650 (Ind. 2007); and *Pinkston v. Madry*, 440 F.3d 879 (7th Cir. 2006).

**COURT OF APPEALS
MISSION STATEMENT:
“TO SERVE ALL PEOPLE BY PROVIDING
EQUAL JUSTICE UNDER LAW”**

SYNOPSIS

In August 2014, a jury convicted Jordan Pribie of the rape of C.G. (In sexual assault cases, courts use the victim’s initials to preserve anonymity.) C.G. had been invited to a house party by her ex-boyfriend, who was Pribie’s housemate. At the house were several other partygoers.

The group played drinking games in the living room. Eventually, both C.G. and her ex-boyfriend became intoxicated to the point of illness. The ex-boyfriend went to bed, and C.G. tried to fall asleep on the couch.

Pribie began bothering C.G. while she was trying to sleep. She said, “No,” but he continued. When she kept ignoring him, he grabbed her arm, pulled her upright, and pushed her toward his bedroom. Once in the bedroom, C.G. testified that he sexually assaulted her.

The other partygoers had been outside when C.G. was asleep on the couch, but they returned to the living room shortly after Pribie took C.G. to the bedroom. One person testified that he heard C.G. say, “Get off of me. No. Stop. I don’t want to.” The other partygoer heard similar statements: “Stop it. No. Quit.” The two yelled at Pribie to stop, and when they began walking toward the room, Pribie emerged. They noticed that C.G. was under the covers, crying.

C.G. was reluctant to tell her parents what had transpired. About four days after the event, C.G. told her parents and pressed charges. She went to the hospital to have a rape kit performed. The rape kit did not reveal DNA consistent with Pribie’s but did reveal DNA from an unknown male.

In criminal trials, trial courts generally admit any piece of evidence that might help a jury decide the

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Court of Appeals of Indiana

*Hearing oral argument at
School of Public & Environmental Affairs
Indiana University-Bloomington
Friday, Nov. 6, 2015 @ 10 a.m.*



Pribie v. State
12A02-1412-CR-836

*On Appeal from Clinton Circuit Court
Bradley K. Mohler, Judge*

Justice, quoted

The complete independence of the courts of justice is peculiarly essential in a limited Constitution.
- Alexander Hamilton, *Federalist 78*

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.
- Chief Justice John Marshall

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.
- Justice Oliver Wendell Holmes, Jr.

The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.
- Justice Felix Frankfurter

Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.
- Justice Elena Kagan

Most high courts in other nations do not have discretion, such as we enjoy, in selecting the cases that the high court reviews. Our court is virtually alone in the amount of discretion it has.
- Justice Sandra Day O'Connor

Restriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.
- Justice Thurgood Marshall

The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases. It's the law. The judge applies the law to the facts before that judge.
- Justice Sonia Sotomayor

The day you see a camera come into our courtroom, it's going to roll over my dead body.
- Justice David Souter



The seat of Monroe County government, the Monroe County Courthouse dates from 1908. The Beaux Arts-style building was designed by Wing & Mahurin and erected for \$250,000 by Drake & Caldwell builders.

Sources: *National Register of Historic Places; Allen County Public Library Genealogy Center*

Synopsis, continued

case. Some evidence rules, however, specifically exclude certain types of evidence. Indiana has a rule of evidence known as the “Rape Shield Law.” It basically provides that the defendant in a sexual assault case cannot bring up the sexual history of the victim. In other words, the defendant should not be able to smear a victim as a person of “loose morals,” thereby prejudicing a jury against the victim.

In a hearing held away from the jury, the prosecution argued that this unknown male DNA should be excluded for precisely this reason. It argued that while the absence of Pribie’s DNA should be admitted, because it is relevant to the charge, the other DNA should not be admitted because it is irrelevant to the charge and would prejudice the jury.

Pribie’s attorney argued back: This is not an attempt to smear C.G. by bringing up random events; rather, this unknown male DNA came from within hours of the alleged assault, and therefore is part of the narrative of that evening. He argued that Pribie could have used this information to present an alternative scenario of what happened that evening. The trial court ruled in favor of the prosecution—the absence of Pribie’s DNA was admitted, but the DNA of the unknown male was excluded.

Pribie’s argument on appeal is that this exclusion violated his constitutional rights. By excluding the evidence, he says the trial court prevented him from fully defending himself. He also argues that there were several instances of juror misconduct that also violated his constitutional rights.

Today’s Panel of Judges



The Honorable
Edward W.
Najam, Jr.

Monroe County

Edward W. Najam Jr., was nominated and appointed to the Court of Appeals of Indiana in 1992 and was retained by the electorate in 1996 and 2006. He is presiding judge of the court’s First District, which covers all of southern Indiana.

Judge Najam graduated from the Indiana University High School in Bloomington, where he was raised, and attended Indiana University Bloomington. While at IU, he was elected to Phi Beta Kappa, elected Student Body President, and earned a B.A. in political science in 1969, With Highest Distinction. He also received the Herman B Wells Senior Recognition Award for academic excellence and campus leadership.

Judge Najam earned his J.D. from the Harvard Law School in 1972. After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for 18 years.

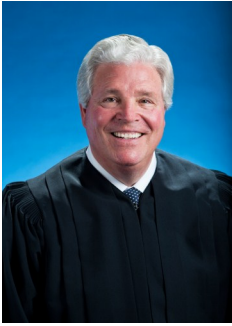
He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana.

He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County YMCA Board of Directors. Judge Najam is a director of the Community Foundation of Bloomington and Monroe County.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure in 2000, the first comprehensive review of the appellate rules in 30 years.

In 2001, he organized and co-chaired “Caught in the Middle: A National

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The Honorable
John G. Baker

Monroe County

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

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The Honorable
Rudolph R. Pyle III

Madison County

Judge Rudolph R. Pyle III was appointed to the Court of Appeals of Indiana by Gov. Mitch Daniels and took his seat on Aug. 27, 2012. He is presiding judge of the 4th District.

A native of Rhode Island, Judge Pyle graduated from Anderson University in 1992 with degrees in history and political science. Two years later, he earned an M.P.P. from the Thomas Jefferson Program in Public Policy at the College of William & Mary in Williamsburg, VA.

He returned to Indiana to become an Indiana State Trooper, where he served almost four years in highway patrol, criminal investigation, new-trooper training and service on the Tactical Intervention Platoon.

In 1997, Judge Pyle began his study and training to become an attorney at Indiana University Maurer School of Law-Bloomington. While in law school, he was an Indiana Conference for Legal Education Opportunities fellow and worked as a legal advisor for the Bloomington Police Dept. He was also inducted into Who’s Who Among American Law Students.

Judge Pyle was admitted to the Indiana bar in 2000 and served four years as a judicial clerk for Judge Carr L. Darden at the Court of Appeals. There, he assisted in writing and researching opinions involving criminal, contract, family and constitutional law, among others. Judge Pyle has also taught courses in public policy, constitutional law and criminal law as an adjunct professor at Anderson University.

Appointed in 2004 as a Madison County deputy prosecutor, he tried a wide range of major felony cases, including attempted murder, robbery, child molesting and rape. In that time, he also opened a private practice representing clients in criminal, civil and

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